UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/548,667	04/13/2000	James A. Shields	11418ROUS01	7694

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EXAMINER
NGUYEN, TOAN D

ART UNIT	PAPER NUMBER
2665	

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE **3** MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _26 May 2004_ .

2a) ☒ This action is **FINAL.**   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _11,12,14,15,18-31, 34 and 36_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☒ Claim(s) _11,12,14,15,34 and 36_ is/are allowed.

6) ☒ Claim(s) _18-21 and 25_ is/are rejected.

7) ☒ Claim(s) _22-24 and 26-31_ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

    If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____ .

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

    a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .

4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1.   This application contains claim 4, 7-8, 16-17 and 32-33 (Group II) drawn to an invention

nonelected with traverse in Paper No. 7. A complete reply to the final rejection must include

cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP

§ 821.01.

Claim Rejections - 35 USC § 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

3.   This application currently names joint inventors. In considering patentability of the

claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

claims was commonly owned at the time any inventions covered therein were made absent any

evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c)

and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4.   Claims 18 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Yoshimura et al (US 6,125,397) in view of Newman et al (US 5,852,601).

        For claim 18, Yoshimura et al disclose data transfer apparatus and method using

congestion recovery-type and congestion avoidance-type data transfers, comprising:

an adaptive rate interface (figure 2, reference 101, col. 2 lines 7-8) at each said end node

(figure 2, reference 100) for changing the transmit and receive rate of traffic from a fast rate to a

slow rate during a protection switch (col. 2 lines 22-25);

a link between said adaptive rate interfaces (figure 2, reference 101) for accommodating a

traffic pipe of a first BW corresponding to said fast rate during normal operation (col. 2 lines 18-

20), and a squeezed traffic pipe of a second BW corresponding to said-slow rate during the

protection switch (col. 3 lines 14-17); and

protection switching means for detecting (figure 2, reference 104) an interruption in a

flow of traffic through said traffic pipe and operating the protection switch in response to the

interruption (col. 2 lines 21-25).

However, Yoshimura et al do not disclose from the slow rate to the fast rate upon return

to normal operation from the protection switch. In an analogous art, Newman et al disclose from

the slow rate to the fast rate upon return to normal operation from the protection switch (col. 12

lines 42-46).

One skilled in the art would have recognized the slow rate to the fast rate upon return to

normal operation from the protection switch to use the teachings of Newman et al in the system

of Yoshimura et al. Therefore, it would have been obvious to one of ordinary skill in the art at

the time of the invention, to use the slow rate to the fast rate upon return to normal operation

from the protection switch as taught by Newman et al in Yoshimura et al's system with the

motivation being to provide a recovery rate value indicating the rate of recovery of transmission

rate after the rate has been reduced due to congestion on the virtual channel (col. 11 lines 52-56).

For claim 25, Yoshimura et al disclose data transfer apparatus and method using congestion recovery-type and congestion avoidance-type data transfers, comprising:

exchanging traffic of a first rate between said data terminal (figure 2, reference 100) and said network (figure 2, reference 101) in a normal state of operation (col. 2 lines 18-20); and

transitioning from exchanging traffic of the first rate (col. 2 line 19) to exchanging traffic of a second rate slower than the first rate between said data terminal (figure 2, reference 100) and said network (figure 2, reference 101) during a protection operation (col. 2 lines 21-25).

However, Yoshimura et al do not disclose transitioning from said protection operation to said normal state of operation during a recovery state of operation. In an analogous art, Newman et al disclose transitioning from said protection operation to said normal state of operation during a recovery state of operation (col. 12 lines 42-46).

One skilled in the art would have recognized transitioning from said protection operation to said normal state of operation during a recovery state of operation to use the teachings of Newman et al in the system of Yoshimura et al. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention, to use the transitioning from said protection operation to said normal state of operation during a recovery state of operation as taught by Newman et al in Yoshimura et al's system with the motivation being to provide a recovery rate value indicating the rate of recovery of transmission rate after the rate has been reduced due to congestion on the virtual channel (col. 11 lines 52-56).

5.   Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshimura et al (US 6,125,397) in view of Newman et al (US 5,852,601) further in view of Soirinuo et al (US 6,032,272).

For claim 19, Yoshimura et al in view of Newman et al do not disclose wherein said

protection switching means operate at a path sublayer. In an analogous art, Soirinuo et al disclose

wherein said protection switching means operate at a path sublayer (figure 3, reference 320, col.

7 line 50).

One skilled in the art would have recognized protection switching means operate at a path

sublayer to use the teachings of Soirinuo et al in the system of Yoshimura et al. Therefore, it

would have been obvious to one of ordinary skill in the art at the time of the invention, to use the

protection switching means operate at a path sublayer as taught by Soirinuo et al in Yoshimura et

al's system with the motivation being to provide the Asynchronous Transfer Mode (ATM) layer

304 (col. 7 lines 47-48).

For claim 20, Yoshimura et al disclose wherein said adaptive rate interface (figure 2,

reference 101) is provided in said data terminal (figure 2, reference 100) and operates to

automatically change the data rate of the received and transmitted traffic between said fast and

slow rates, in response to a flow control parameter (col. 2 lines 17-25).

For claim 21, Yoshimura et al disclose wherein said adaptive rate interface (figure 2,

reference 101) is provided in said data terminal (figure 2, reference 100) and operates to change

the data rate of the received and transmitted traffic between said fast and said slow rates in

response to a rate change signal received from said protection switching means (col. 2 lines 17-

25).

Allowable Subject Matter

6.   Claims 22-24 and 26-31 are objected to as being dependent upon a rejected base claim,

but would be allowable if rewritten in independent form including all of the limitations of the

base claim and any intervening claim.

7.   Claim 11-12, 14-15, 34 and 36 are allowed.

Regarding claim 34, the prior art fails to teach a combination of the steps of:

upon detection of the interruption, switching the unprotected traffic being transmitted

over the first rout to being transmitted over a second route, wherein the switched traffic is

transmitted over the second route at a slower transmission rate than the first transmission rate, in

the specific combination as recited in the claim.

Response to Arguments

8.   Applicant's arguments with respect to claims 11-12, 14-15, 18-31, 34 and 36 have been

considered but are moot in view of the new ground(s) of rejection.

Conclusion

9.   Applicant's amendment on September 02, 2003 necessitated the new ground(s) of

rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See

MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this
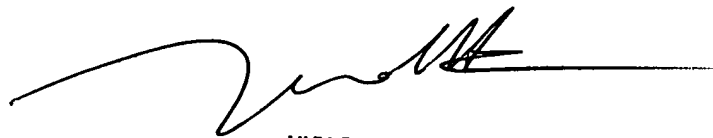
final action.

Contact Information

10.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Toan D Nguyen whose telephone number is 703-305-0140. The

examiner can normally be reached on Monday- Friday (7:00AM-4:30PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Mr. Huy Vu can be reached on 703-308-6602. The fax phone numbers for the

organization where this application or proceeding is assigned are 703-872-9314 for regular

communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding

should be directed to the receptionist whose telephone number is 703-305-9600.

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TN

HUY D. VU
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